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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,843	10/17/2003	Sherwin Shang	DI-5855 US	9443
29290 7590 03/25/2008 BAXTER HEALTHCARE CORPORATION 1 BAXTER PARKWAY DF2-2E DEERFIELD, IL 60015				
EXAMINER				
PATTERSON, MARC A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/688,843
Filing Date: October 17, 2003
Appellant(s): SHANG ET AL.

Robert M. Barrett
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 21, 2007 appealing from the Office action mailed October 4, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

NEW GROUND(S) OF REJECTION

Claims 1 – 6 and 12 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shang et al (U.S. Patent Publication No. 2002/0115795).

Claims 7 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Hamilton et al (U.S. Patent No. 5,397,842).

Claims 9 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Cahill et al (U.S. Patent No. 6,346,308).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0115795	SHANG et al.	8-2002
5,397,842	HAMILTON et al.	3-1995
6,346,308	CAHILL et al.	2-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 6 and 12 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shang et al (U.S. Patent Publication No. 2002/0115795).

With regard to Claims 1 – 2 and 14, Shang et al disclose a monolayer film (paragraph 0038) comprising a blend of a first component of an ethylene – lower alkyl acrylate interpolymer (paragraph 0038) present in an amount of 50% by weight of the film (paragraph 0024) and a

Art Unit: 1700

second component of a propylene containing polymer (paragraph 0039) present in an amount of 50% by weight of the film (paragraph 0024) and the film capable of withstanding steam sterilization at 121 degrees Celsius (therefore terminal sterilization by exposure to steam at 121 degrees Celsius for one hour; paragraph 0004) and the first and second components having melting point temperatures determined by DSC, and the second melting point temperature is higher than the first melting point temperature (paragraph 0068); a portion of the first component is crosslinked and the second component is free of crosslinking (paragraph 0024) and the film is therefore partially crosslink free.

With regard to Claims 3 and 6, the ethylene containing polymer is obtained using a single site catalyst (paragraph 0042).

With regard to Claim 4, the ethylene containing polymer is a copolymer (paragraph 0073).

With regard to Claim 5, the propylene containing polymer is a copolymer (paragraph 0076).

With regard to Claim 12, the film is prepared by extrusion (paragraph 0085); however, the claimed aspect of the film being prepared by extrusion is a method limitation, rather than a structural limitation, and is therefore given little patentable weight.

With regard to Claims 13 and 15, the blend disclosed by Shang et al has a composition which is identical to the claimed invention, as stated above, and is capable of being fabricated into a liquid filled container (medical fluid container; paragraph 0004); the claimed aspects of the container having sufficient impact strength to resist rupturing when dropped from 8 feet and being capable of being sterilized by exposure to radiation are therefore inherent to Shang et al.

Art Unit: 1700

With regard to Claim 16, the film is capable of forming a peel seal to form a multiple chambered container (dual chambered container; paragraph 0100).

With regard to Claim 17, the film is capable of forming a permanent seal (paragraph 0083), therefore to form a multiple chambered container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Hamilton et al (U.S. Patent No. 5,397,842).

Shang et al discloses a container comprising a propylene containing polymer as discussed above. With regard to Claims 7 – 8, Shang et al fail to disclose a propylene container comprising a high melt strength polymer.

Hamilton et al teach a container (column 3, line 68) comprising a propylene polymer that is a high melt strength polymer (Abstract) for the purpose of obtaining a container that is resistant to sag (column 1, lines 10 – 13). One of ordinary skill in the art would therefore have recognized the advantage of providing for the high melt strength polymer of Hamilton et al in

Shang et al, which comprises a container, depending on the desired resistance to sag of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a propylene container comprising a high melt strength polymer in Shang et al in order to obtain a container that is resistant to sag as taught by Hamilton et al.

Claims 9 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Cahill et al (U.S. Patent No. 6,346,308).

Shang et al disclose a polymer as discussed above. With regard to Claims 9 – 11, Shang et al fail to disclose a polymer comprising an oxygen scavenger comprising oxidizable polyether and polydiene.

Cahill et al teach a polymer comprising oxygen scavenger comprising oxidizable polyether or polydiene for the purpose of obtaining a polymer having an extended shelf life (polybutadiene; column 4, lines 18 – 36). One of ordinary skill in the art would therefore have recognized the advantage of providing for the oxygen scavenger of Cahill et al in Shang et al, which comprises a polymer, depending on the desired shelf life of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a polymer comprising an oxygen scavenger comprising oxidizable polyether and polydiene in Shang et al in order to obtain a polymer having an extended shelf life as taught by Cahill et al

NEW GROUNDS OF REJECTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 6 and 12 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shang et al (U.S. Patent Publication No. 2002/0115795).

With regard to Claims 1 – 2 and 14, Shang et al disclose a monolayer film comprising a blend as discussed above. Prior to crosslinking, by irradiation, the blend is extruded to produce the monolayer film (paragraph 0085); prior to crosslinking, Shang et al therefore disclose a monolayer film that is entirely crosslink free.

With regard to Claims 3 and 6, the ethylene containing polymer is obtained using a single site catalyst (paragraph 0042).

With regard to Claim 4, the ethylene containing polymer is a copolymer (paragraph 0073).

With regard to Claim 5, the propylene containing polymer is a copolymer (paragraph 0076).

With regard to Claim 12, the film is prepared by extrusion (paragraph 0085); however, the claimed aspect of the film being prepared by extrusion is a method limitation, rather than a structural limitation, and is therefore given little patentable weight.

With regard to Claims 13 and 15, the blend disclosed by Shang et al has a composition which is identical to the claimed invention, as stated above, and is capable of being fabricated into a liquid filled container (medical fluid container; paragraph 0004); the claimed aspects of the container having sufficient impact strength to resist rupturing when dropped from 8 feet and being capable of being sterilized by exposure to radiation are therefore inherent to Shang et al.

With regard to Claim 16, the film is capable of forming a peel seal to form a multiple chambered container (dual chambered container; paragraph 0100).

With regard to Claim 17, the film is capable of forming a permanent seal (paragraph 0083), therefore to form a multiple chambered container.

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Hamilton et al (U.S. Patent No. 5,397,842).

Shang et al discloses a container comprising a propylene containing polymer as discussed above. With regard to Claims 7 – 8, Shang et al fail to disclose a propylene container comprising a high melt strength polymer.

Hamilton et al teach a container (column 3, line 68) comprising a propylene polymer that is a high melt strength polymer (Abstract) for the purpose of obtaining a container that is resistant to sag (column 1, lines 10 – 13). One of ordinary skill in the art would therefore have recognized the advantage of providing for the high melt strength polymer of Hamilton et al in Shang et al, which comprises a container, depending on the desired resistance to sag of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a propylene container comprising a high melt strength polymer in Shang et al in order to obtain a container that is resistant to sag as taught by Hamilton et al.

Claims 9 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Cahill et al (U.S. Patent No. 6,346,308).

Shang et al disclose a polymer as discussed above. With regard to Claims 9 – 11, Shang et al fail to disclose a polymer comprising an oxygen scavenger comprising oxidizable polyether and polydiene.

Cahill et al teach a polymer comprising oxygen scavenger comprising oxidizable polyether or polydiene for the purpose of obtaining a polymer having an extended shelf life (polybutadiene; column 4, lines 18 – 36). One of ordinary skill in the art would therefore have recognized the advantage of providing for the oxygen scavenger of Cahill et al in Shang et al, which comprises a polymer, depending on the desired shelf life of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a polymer comprising an oxygen scavenger comprising oxidizable polyether and polydiene in Shang et al in order to obtain a polymer having an extended shelf life as taught by Cahill et al

(10) Response to Argument

Appellant argues that Shang et al fail to disclose or suggest a crosslink free monolayer film, because Shang et al do not disclose a film that is entirely crosslink free.

However, because Shang et al disclose a film that is partially crosslink free, Shang et al is not excluded by the claim limitation of a crosslink free film; furthermore, prior to crosslinking, Shang et al disclose a film that is entirely crosslink free.

Appellant also argues that films that are partially crosslink free differ from films that are entirely crosslink free, in that films that are partially crosslinked show a significant increase in melt viscosity.

However, as stated above, because Shang et al disclose a film that is partially crosslink free, Shang et al is not excluded by the limitation of a crosslink free film.

Appellant also argues that Shang et al does not disclose a polymer blend having an ethylene - based component in an amount of 10 – 50% by weight of the film and a second propylene component in an amount of 50 – 90% by weight; Shang et al, Appellant argues, is primarily directed to a film having a first component in the amount of 55 – 99% by weight and a second component in the amount of 1 – 45% by weight.

However, Shang et al clearly discloses a first component and second component, each of which is 50% of the blend by weight (paragraph 0024), and does not teach any amounts having greater, or more primary, significance.

Appellant also argues that Hamilton et al fail to disclose a crosslink free film, and that furthermore, Hamilton et al may be crosslinked.

However, as stated above, a crosslink free film is disclosed by Shang et al; furthermore, it would have been obvious for one of ordinary skill in the art to have provided for a propylene container comprising a high melt strength polymer in Shang et al in order to obtain a container that is resistant to sag as taught by Hamilton et al.

Appellant also argues that Cahill et al fail to disclose a crosslink free film. However, as stated above, a crosslink free film is disclosed by Shang et al.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Marc A Patterson/

Primary Examiner, Art Unit 1794

Art Unit: 1700

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700

Conferees:

/Carol Chaney/

Supervisory Patent Examiner, Art Unit 1794

/Rena L. Dye/

Supervisory Patent Examiner, Art Unit 1794